

language describing a 'prescription.' The Court answered a certified question from the Court of Appeals for the Sixth Circuit:

3. If a practicing and registered physician issues an order for morphine to an habitual user thereof, the order not being issued by him in the course of professional treatment in the attempted cure of the habit, but being issued for the purpose of providing the user with morphine sufficient to keep him comfortable by maintaining his customary use, is such order a physician's prescription under exception (b) of § 2?

Webb v. United States, 249 U.S. 96, 99.

"The answer, obvious it seems to any who consider the matter, was:

As to question three—to call such an order for the use of morphine a physician's prescription would be so plain a perversion of meaning that no discussion of the subject is required. That question should be answered in the negative.

Webb v. United States, 249 U.S. 96, 100.

"What was there said by the Supreme Court answers, we think, appellant's objection to the court's charge that the jury might properly consider whether a doctor-patient relationship existed.² The inquiry whether there was a bona fide relationship of patient and doctor bears on the question whether there had ever been a 'prescription' for the agents. The court thus broadened the term to something more than written paper, which really benefitted the accused. The jury, under this charge, could have found that Dr. Brown 'prescribed' for the men if the jury had found the existence of a doctor-patient relationship which appellant testified vaguely did exist, at least as to two of the sales. There was no error in submitting this issue to the jury.

"We conclude that the jury had ample grounds for finding that Dr. Brown dispensed the tablets without prescription and we find that such action is prohibited under the law, even when done by a regularly licensed physician.

"The judgment is **AFFIRMED**."

The defendant filed a petition for a writ of certiorari with the United States Supreme Court, and on 4-28-58 the petition was denied (356 U.S. 938).

5681. Supplement to notice of judgment on drugs and devices No. 4844. Violation of probation. (F.D.C. No. 36594. S. Nos. 44-997/8P.)

VIOLATION OF PROBATION: About 3-4-59, an application was filed for revocation of probation imposed against Homer N. Archambault, the defendant in the case reported in the above-mentioned notice of judgment. It was alleged in the application that the defendant had, on 1-17-59, dispensed a number of *sulfadiazine tablets* without a prescription.

DISPOSITION: After a hearing on 3-11-59, the court found the defendant had violated the conditions of his probation. Thereupon the court revoked the order of probation previously entered and sentenced the defendant to 11 months and 15 days in jail.

5682. (F.D.C. No. 39834. S. Nos. 41-601 M, 41-603 M, 41-610 M.)

INFORMATION FILED: 12-11-57, W. Dist. N.Y., against Singer's Cut Rate Drug Store, Inc., Buffalo, N.Y., Morris Olodort (store manager and pharmacist), and Abraham C. Taylorson (pharmacist).

² The charge was:

"If you find that the defendant did dispense the original contents of Government Exhibits 1, 2 and 3, two of them to the Government witness Spivak, and the other to the Government witness Keeting, then in determining whether he dispensed the drugs therein on prescription, you may properly consider whether a doctor-patient relationship existed between the defendant and the person to whom you find he sold the bottle of drug in each instance, whether he considered the individual needs of the person to whom he dispensed the drug, the quantity of the drug dispensed and the manner in which he supervised the use of the drug. The fact that the defendant is a physician licensed under the laws of Texas does not exempt him from responsibility for any violation of the terms of the Federal law in question."

CHARGE: Between 6-15-56 and 7-11-56, *secobarbital sodium capsules* (count 1) were dispensed once and *capsules containing a mixture of secobarbital sodium and amobarbital sodium* (counts 2 and 3) were dispensed twice without a prescription.

PLEA: Nolo contendere by the corporation; by Olodort to all counts; and by Taylorson to counts 1 and 3.

DISPOSITION: 7-22-59. Corporation—\$400 fine; Olodort and Taylorson—\$50 fine each.

5683. (F.D.C. No. 40441. S. Nos. 41-862 M, 41-873 M, 41-875 M, 42-183 M, 42-185 M, 42-189/91 M.)

INFORMATION FILED: 12-23-57, W. Dist. N.Y., against Cogan's Pharmacy (a corporation), Buffalo, N.Y., Jacob E. Epstein (vice president and secretary-treasurer), and Gerald E. Warmus (pharmacist).

CHARGE: Between 8-17-56 and 1-28-57, *capsules containing secobarbital sodium* (counts 1, 2, and 4) were dispensed three times, *tablets containing dextro-amphetamine sulfate* (count 3) and *tablets containing meprobamate* (count 5) were each dispensed once, and *tablets containing sulfoxazole* (counts 6 and 7) were dispensed twice upon requests for prescription refills without authorization from a prescriber; and *tablets containing dextro-amphetamine sulfate* (count 8) were dispensed once without a prescription.

PLEA: Nolo contendere by the corporation and Epstein to all counts and by Warmus to counts 2, 3, 5, 7, and 8.

DISPOSITION: 7-22-59. Corporation—\$400 fine; Epstein and Warmus—\$50 each fine.

5684. (F.D.C. No. 38546. S. Nos. 4-508 M, 4-561 M, 4-570 M, 4-713 M, 4-719 M.)

INFORMATION FILED: 12-11-57, W. Dist. N.Y., against Frank Stein, t/a Day's Cut Rate Drug Store, Buffalo, N.Y., and Irwin Rubin (pharmacist).

CHARGE: Between 4-18-55 and 5-11-55, *butabarbital sodium elixir* (count 1) was dispensed once and *Gantrisin tablets* (counts 2-5) were dispensed four times upon requests for prescription refills without authorization from a prescriber.

PLEA: Nolo contendere by Frank Stein to all counts and by Irwin Rubin to counts 3, 4, and 5.

DISPOSITION: 7-22-59. Frank Stein—\$400 fine; Irwin Rubin—\$50 fine.

5685. (F.D.C. No. 38549. S. Nos. 4-511 M, 4-514 M, 4-562 M, 4-564 M, 4-718 M.)

INFORMATION FILED: 12-11-57, W. Dist. N.Y., against Nathan Pigovat, t/a Nate's Pharmacy, Buffalo, N.Y., and Benjamin Pigovat (pharmacist).

CHARGE: Between 4-18-55 and 5-11-55, *butabarbital sodium elixir* (counts 1 and 2) was dispensed twice and *Gantrisin tablets* (counts 3-5) were dispensed three times upon requests for prescription refills without authorization from a prescriber.

PLEA: Nolo contendere by Nathan Pigovat to all counts and by Benjamin Pigovat to counts 2, 4, and 5.

DISPOSITION: 7-22-59. Nathan Pigovat—\$400 fine; Benjamin Pigovat—\$50 fine.